

06/12/17

IN THE SUPREME COURT OF TONGA  
FAMILY JURISDICTION  
NEIAFU REGISTRY

FA 114 of 2017

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IN THE MATTER OF: **The Guardianship Act 2004**

AND

IN THE MATTER OF: An application by **Kineleti Kalauni Pouvalu** for a legal guardianship order in respect of a child namely **Marina Kineleti Latu**, a female child born on 19 January 2015

BEFORE THE LORD CHIEF JUSTICE PAULSEN

Counsel: **Mr. 'A Pouvalu for the applicant**  
**Miss. T. Kafa for the Guardian ad Litem**

Hearing: **30 November 2017**  
Date of Ruling: **5 December 2017**

### RULING

#### The application

- [1] The applicant is a single man seeking legal guardianship of Marina Kineleti Latu, a female child who will turn 2 years old on 19 January 2018.
- [2] The application is supported by Marina's natural parents and also by her grandparents, who have cared for her for most of her short life to date.
- [3] The guardian ad litem opposes the application on the grounds that the making of a legal guardianship order is not in Marina's best interests.

rec'd 06/12/17  
HC

**The facts**

- [4] Marina was born on 19 January 2015. She is the second child of Veisia and Sekope Latu. They have another daughter who is 6 years old. Mr. Latu is a farmer and Mrs. Latu weaves Tongan mats. I am told that they live in their own house on land owned by Mr. Latu's father.
- [5] The applicant, Mr. Kineleti Pouvalu, is a 50 year old Tongan man who lives in the United States. He has family in Tonga, owns land here and visits each year. He is related to the natural mother. His sister is the natural mother's mother (i.e. Mrs. Latu is Mr. Pouvalu's niece and Marina is his grandniece). Mr. Pouvalu is not married and has no children.
- [6] When Marina was born Mr. Pouvalu was in Tonga to visit his mother. He saw Marina's birth as an opportunity to have a child of his own. He asked Mr. & Mrs. Latu for her and they agreed that he could customarily adopt her. Mr. Pouvalu named Marina. He then took Marina with him and lived with her for about a month at Vava'u before returning to the United States. Mr. Pouvalu did not take Marina with him to the United States. Marina was left with her maternal grandparents, Sisi and Sepa Holi (Mrs. Latu's parents). They have cared for her up to the present time. They are aged 50 and 57 respectively. Mr. Holi is a farmer, mostly for subsistence purposes but he also sells kava from time to time. Mrs. Holi works as a teacher at Feletoa GPS.
- [7] I accept that Mr. Pouvalu loves Marina and that his motives in making this application are entirely honorable and genuine. He provides financially for Marina, sending money regularly for her care,

and he has visited each year to spend time with Marina and he ships goods to Tonga for her. It is not Mr. Pouvalu's intention to have Marina live with him in the United States at the present time and he does not intend to move back permanently to Tonga to raise her here. He is not a United States citizen but has permanent residency there and intends to apply for citizenship. He accepts that his work obligations and living arrangements are not suitable for Marina's care and she will remain in Tonga with her grandparents for the foreseeable future. He said that in perhaps 10-15 years he might look to take Marina to the United States with her grandmother. He raises the possibility of adopting her in the United States and wants her to obtain the benefits that are available in that country which include a good education.

- [8] Mr. Latu believes that the making of a legal guardianship order will benefit Marina because he provides financially for her and will continue to do so and it will make it easier for her to inherit his belongings and other benefits including his life insurance.

**The interested parties' positions**

- [9] Mr. & Mrs. Holi support the application because they acknowledge that Mr. Pouvalu provides financially for Marina and also they are concerned that when they retire that it will be difficult for them to care for her.
- [10] Mr. & Mrs. Latu also support the application and say that they have limited financial means and are not able to provide financially for Marina. However, I note that they already provide for one child and that they see Marina when they visit with Mr. & Mrs. Holi. Marina demonstrated that she has an emotional attachment to Mrs. Latu.

[11] The guardian ad litem has opposed the application for essentially four reasons. First, the guardian ad litem notes that Mr. Pouvalu is a single man seeking legal guardianship of a female child and the Court should be cautious about making a legal guardianship order in those circumstances. Secondly, that Mr. Pouvalu has not demonstrated a sufficient bond with Marina as he has spent little time with her since her birth and she has spent almost all of her life living with her grandparents. Thirdly, that the making of a legal guardianship order will not achieve Mr. Latu's long term goal of taking Marina to the United States and it is unlikely he will be able to obtain an adoption order in that country, and fourthly that Mr. Pouvalu's living arrangements in the United States are not suitable for Marina's care.

**Discussion**

[12] I advised Mr. Pouvalu at the hearing that it did not appear to me that it was appropriate to grant this application. Having reviewed all the information before the Court I have not been moved from my original assessment. I consider that the making of a legal guardianship order is not in the best interests of Marina at the present time. My reasons are the following.

[13] First, I agree with the guardian ad litem that the Court should be cautious before granting a single man a legal guardianship order (or an adoption order) in respect of a female child. This is recognised in various jurisdictions throughout the World (see s.4(2) Adoption Act (NZ)). This factor is not determinative of this application which fails for other reasons.

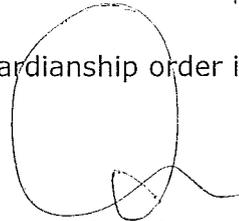
- [14] Secondly, there are adequate arrangements already in place for Marina's custody, care and maintenance. Marina is living with her grandparents. She appears to be an outgoing, healthy and happy child. She has contact with her natural parents who she will have some bond with. She is fortunate that she also has the benefit of Mr. Pouvalu's love as well as the financial and other contributions that he makes to her life. However, Mr. Pouvalu lives in the United States and does not intend (at least for a good number of years) to exercise any of the day to day duties and responsibilities of a legal guardian. Mr. & Mrs. Holi are Marina's custodians and guardians in fact. They are here in Tonga, raising Marina each day and making the important decisions that will affect her life.
- [15] Thirdly, I do not see that the making of a legal guardianship order will promote Marina's best interests in any manner suggested by Mr. Pouvalu. It is true that Mr. Pouvalu provides financially for her but he will continue to do so whether or not the legal guardianship order is made. Marina may inherit Mr. Pouvalu's property by will or, in the case of life insurance, by naming Marina as the beneficiary of the policy. As to Mr. Pouvalu's desire that he may one day take Marina to the United States and adopt her, there can be no certainty about that occurring or that it will be promoted by the making of a legal guardianship order.
- [16] Fourthly, if I was to grant the legal guardianship order that would confer upon Mr. Pouvalu rights in respect of Marina's custody, care and maintenance which are greater than those of her grandparents. That would be inappropriate as the grandparents are the persons best able to make decisions for Marina at the present time.

[17] Another consideration is that should I grant Mr. Pouvalu a legal guardianship order he could at some stage in the future choose to take Marina to the United States without any further oversight of the Court. That would be entirely inappropriate when at the present time it is accepted that he is not able to properly care for her.

[18] I do not dismiss entirely the possibility that in time circumstances may change both for Marina here in Tonga and for Mr. Pouvalu in the United States to an extent that Mr. Pouvalu may be able to establish that it is in Marina's best interests that the Court make a legal guardianship order. At the present time there is no such justification for doing so.

**Result**

[19] Mr. Pouvalu's application for a legal guardianship order is dismissed.



O.G. Paulsen

**NUKU'ALOFA: 5 December 2017**

**LORD CHIEF JUSTICE**